

Meeting Date: 10/28/08

Santa Clara



AGENDA REPORT

City of Santa Clara, California

Agenda Item #

6B



DATE: October 23, 2008

TO: City Manager for Council Information

FROM: Director of Streets & Automotive Services

SUBJECT: Plastic and Other Single-Use Carryout Bags Restrictions Update

Plastic carryout bags make up a significant component of litter on our streets and in our waterways. These bags are typically manufactured from either high density polyethylene (HDPE – recycling symbol #2) or low density polyethylene (LDPE – recycling symbol #4). The bags are recyclable, but only a small percentage are recycled. The County of Los Angeles conducted a study in 2007 and estimated that only 1% to 5% of the 19 billion bags used annually in California are recycled. Reasons for the small recycling rate include weak markets for the recycled resin, difficulties in the sorting process at material recovery facilities, some jurisdictions do not take plastic bags in their curbside recycling collection programs, and people independently choose to throw plastic bags away rather than recycle them.

California Assembly Bill 2449, which took effect on July 1, 2007, requires grocery stores and retail pharmacies greater than 10,000 square feet to establish an in-store plastic bag recycling program at no charge to the public, and to make reusable bags (made from cloth, fabric, or plastic with a thickness of 2.25 mils or greater) available to customers for purchase. The bill also specifically prohibits local governments from imposing a fee on covered stores for providing plastic carryout bags.

After local supermarkets and retail pharmacies failed to meet plastic bag consumption reduction targets, the City of San Francisco passed an ordinance in March of 2007 that bans the distribution of non-biodegradable plastic carryout bags. The City of Oakland passed a similar ordinance in July of 2007. The Coalition to Support Plastic Bag Recycling successfully sued the City of Oakland on the grounds that the City failed to complete an environmental impact report prior to adopting its ordinance. This coalition argued that the ordinance encourages the use of paper bags, which require significantly more energy to produce, or compostable bags that contaminate recyclable loads of plastic when mixed in with the wastestream, and the significant effects of this activity required environmental review.

The City of San Jose and the City of Palo Alto are currently pursuing single-use carryout bag restrictions. The City of San Jose is looking at banning all single-use bags (plastic, paper, and compostable), while the City of Palo Alto is looking to ban only plastic bags, and placing a fee on paper bags. The City of San Jose is attempting to gain industry stakeholder input and may develop an ordinance that bans all single-use carryout bags given at the point of sale. The City of San Jose is may develop an ordinance that would permit retailers to "voluntarily opt" for continued use of banned single-use carryout bags by charging a fee of 25 cents per bag, or charging a 25 cent fee directly to consumers. A portion of the fee would go to the stores to cover implementation of the program, and the rest of the fee would go to the City of San Jose to fund litter abatement programs. However, an ordinance passed with the 25 cent fee per bag would likely be subject to litigation on the basis that it violates the clause in AB 2449 that prohibits local governments from placing a fee on plastic carryout bags. Moreover, it is likely that such an ordinance will require some level of environmental review prior to adoption.

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Ireland placed a fee of 20 cents on each plastic bag consumed in 2002, which resulted in an approximate 90% reduction in the consumption of plastic bags. AB 2769, which would have implemented a \$0.25 per plastic bag at check-out, recently failed to move out of the California legislature. Californians Against Waste (CAW) has indicated that it will be introducing similar legislation in the coming year.

On August 27, 2008, the Recycling and Waste Reduction Commission (RWRC) of Santa Clara County passed a motion to direct its Technical Advisory Committee to prepare a recommendation and draft policy on single-use carryout bags and report back. The Source Reduction and Recycling Subcommittee (SRRS) of the Technical Advisory Committee (TAC) met on September 25, 2008 and formulated the framework of a single-use carryout bag policy.

The Subcommittee agreed that all single-use carryout bags (plastic, paper, and compostable) given at the point of sale should be covered under a policy. Produce, meat, and header bags which are used to protect perishable or fragile items would not be subject to the single-use carryout bag regulation. The subcommittee also agreed that a policy similar to the City of San Jose's option of banning all single-use carryout bags, while allowing retail stores to "voluntarily opt" to charge a fee for the bags, or placing a fee on consumers would be most effective, assuming that either option to charge a fee withstands legal scrutiny. The subcommittee agreed that the only way to change consumer culture into bringing a reusable bag into stores, is to make using single-use bags economically undesirable. On October 22, 2008, the RWRC reviewed and approved the deal points developed by the SRRS and directed TAC to develop a model countywide single-use carryout bag ordinance by December 10, 2008, with the goal of implementing it in April of 2009.

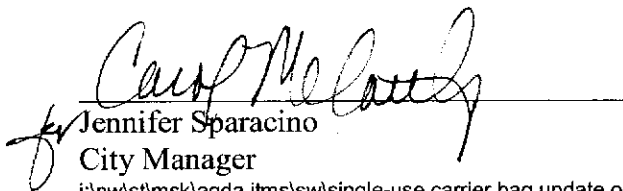
The Subcommittee will continue to work toward the development of an ordinance that addresses plastic and other single-use carryout bags. Once a draft ordinance is completed, it will be reviewed by legal counsel and then presented to the Technical Advisory Committee and the Recycling and Waste Reduction Commission of Santa Clara County. City staff will continue to participate in stakeholder meetings to develop an ordinance that addresses single-use carryout bags; however, staff believes that if legal counsel finds that permitting stores to "voluntarily opt" to charge a fee, or charging a fee directly to consumers for single-use carryout bags is in violation of the statutes set forth in AB 2449, it would be prudent to delay passage of any local policy or ordinance addressing the issue, unless the State passes legislation that institutes a ban or a fee on the use of plastic and/or other single-use carryout bags.



Richard J. Mauck
Director of Streets & Automotive Services

For

APPROVED:



Jennifer Sparacino
City Manager

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